

# Department of Taxation

**Regulation Title: OCCASIONAL SALES**  
**VAC Number: 23 VAC 10-210-1080**

- 1. Statement identifying and describing the source of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;**

Section 58.1-203 of the Code of Virginia authorizes the Commissioner of the Department of Taxation to promulgate regulations related to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the department.

- 2. Statement delineating the potential issues to be addressed in the proposed regulation;**

This regulation as currently written is unclear and subject to multiple interpretations. The exemption provided in the statute relies solely on the definition of An occasional sale as provided under § 58.1-602 of the Code of Virginia. There has been a great deal of controversy regarding whether a business sale constitutes an An occasional sale. The Office of the Attorney General has suggested language to amend the regulation by adding criteria that will be used to determine if a sale of a business or division constituted an An occasional sale.” The proposed criteria would include:

- ☐ Separate set of books for each division or subsidiary;
- ☐ Separate bank accounts;
- ☐ Employees active in only one division or subsidiary;
- ☐ Separately housed divisions;
- ☐ Separate assets that are not interchangeable.

- 3. Statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve;**

The Office of the Attorney General has indicated that the current regulation does not accurately reflect the intent of the General Assembly and can lead to misinterpretation. It is critical that the department’s regulations are clear and accurate in the event of litigation.

4. **Statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered, and the reasoning by which the agency has rejected any of the alternatives considered.**

Alternatives which might achieve the essential purpose for which the regulatory action has been undertaken were considered; however, due to the fact that the statute's language is broad, it is critical that the department's policy be clearly articulated in the regulation.